



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to  
Implement the Commission's  
Procurement Incentive Framework and  
to Examine the Integration of  
Greenhouse Gas Emissions Standards  
into Procurement Policies.

Rulemaking 06-04-009  
(Filed April 13, 2006)

**REPLY COMMENTS OF  
THE DIVISION OF RATEPAYER ADVOCATES  
ON THE PHASE 1 ISSUES WORKSHOP REPORT**

**I. INTRODUCTION**

Pursuant to the August 22, 2006, *Administrative Law Judge's Ruling Regarding Workshop Report and Motions to Intervene*, as modified by the grant of an extension of time for Comments granted by ALJ Econome on August 28, 2006, the Division of Ratepayer Advocates (DRA) submits the following reply comments on the Division of Strategic Planning's "Draft Workshop Report: Interim Emissions Performance Standard Program Framework" (Draft Workshop Report).

**II. DISCUSSION**

**A. Adoption of a greenhouse gases emissions performance standard**

If signed by the Governor, Senate Bill (SB) 1368 contains a provision that would require the Commission, through a rulemaking and in consultation with the Energy Commission and the California Air Resources Board (CARB) to adopt an emissions performance standard (EPS or standard) that is "no higher than the rate of emissions of

greenhouse gases for combined-cycle natural gas baseload generation.”<sup>1</sup> While this provision does not establish a specific numerical target, a standard that is the average of “existing combined cycle natural gas baseload generation” appears consistent with the provision’s intent, especially because SB 1368 deems in compliance with the standard “all combined cycle natural gas power plants that are in operation or have an “Energy Commission final permit decision to operate” as of June 20, 2007.

DRA continues to support the Draft Workshop Report’s proposed EPS of 1000 lbs/MWh. Pacific Gas and Electric Company (PG&E) states that setting the standard at 1000 lbs/MWh is “too stringent.” In support of this position, PG&E identified several combined cycle gas turbines (CCGTs) with CO<sub>2</sub> reported emissions over the past several years that slightly exceed the proposed EPS.<sup>2</sup> The fact that some operating CCGTs would not meet the proposed EPS is not a good reason to increase the permissible level of amount of emissions. Existing CCGT plants will be “grandfathered” into EPS compliance, and the latest CCGT plants have emission rates below 1000 lbs CO<sub>2</sub>/MWh.

PG&E also contends that reciprocating engine units needed for reliable operation of the grid will exceed the EPS. However, if these engines are used for peaking they will not meet the 60 percent capacity factor and would therefore not be a baseload resource required to meet the EPS. If the reciprocating engines were run as baseload resources, this would only be in a transmission constrained area or “load pocket” where they would presumably be required for system reliability, and therefore also exempt from the EPS.

Southern California Edison (SCE) also claims that the Draft Workshop Report’s proposed limit is “too low” and that despite SB 1368’s exemption for existing or permitted CCGTs, the proposed EPS would preclude utilities from procuring “significant generation resources.”<sup>3</sup> SCE argues that the Commission should consider this matter in a

---

<sup>1</sup> The requirement would be codified at Section 8431(d)(1) of the Public Utilities Code.

<sup>2</sup> September 8, 2006, PG&E Comments on Draft Workshop Report (PG&E Comments), pp. 11-12.

<sup>3</sup> Sept. 8, 2006, SCE Comments on Draft Workshop Report, p.8.

workshop that would "discuss the redirection of this proceeding in light of SB1368)."<sup>4</sup> SCE's comments included no specific examples or data in support of its contention that the proposed standard would interfere with its ability to procure resources.

While another workshop to allow participation by the CARB and Energy Commission might be useful, any process must allow the Commission to meet the February 1, 2007 deadline specified in SB 1368 for establishing the EPS.

### **B. Definition of Baseload/Capacity Factor**

SB 1368, if signed into law, will establish 60 percent or greater as the annual capacity factor that defines a plant as "baseload", and thus covered the EPS. However, the comments of Green Power Institute point out that "SB 1368 limits its mandate to baseload procurements."<sup>5</sup> The Commission could also consider setting a higher EPS limit in lbs CO<sub>2</sub>/MWH for intermediate or "shaping" plants. The annual capacity factor range of intermediate plants might be from 20 percent to 60 percent. This would provide the Commission with an option in the event "gaming" occurred, with plants run at 59 percent annual capacity factor circumvent compliance with the EPS. This type of "gaming" is possible when a "simple" or binary regulatory system creates sudden discontinuities in standards at precise measures of some criteria, such as a unit rating or, in this case, annual capacity factor.<sup>6</sup> It would be preferable to have a smoothly transitioning regulatory curve, or at least a multi-step system.

### **C. Treatment of Unspecified Resources**

DRA's opening comments supported the Draft Workshop Report's recommendation to use the Energy Commission's Net System Power measure to value the CO<sub>2</sub> production of "unspecified" energy sources. SB 1368 does not address this

---

<sup>4</sup> Id.

<sup>5</sup> Sept. 8, 2006 Green Power Institute Comments on Draft Workshop Report, pp. 1.

<sup>6</sup> Another example of potential gaming is the number of power plants that are sized to fall just below a certain MW capacity to simplify siting and other processes.

issue. The joint comments of NRDC, TURN, UCS and WRA (NRDC et al.)<sup>7</sup> correctly note that valuing unspecified energy at anything other than the CO2 equivalent of a pulverized coal plant creates a loophole that could encourage companies to enter into more contracts for unspecified resources.

DRA agrees that identifying unspecified resources as the CO2 equivalent of coal would be easier to administer and closes a significant loophole, but if the Commission believes that excluding contracts for unspecified resources would result in excessive procurement costs, then at a minimum, it should closely monitor the amount of unspecified contracts as the Draft Workshop Report recommends. In that case, DRA believes that the Commission should establish a standard for the level of contracts for unspecified resources.

#### **D. Treatment of CO2 emissions control technologies/projects**

DRA's opening comments recommended "stringent standards and continued monitoring should be used for any such plants, to ensure that carbon dioxide control strategy is actually implemented, and substantial penalties should be applied in the event of failure to do so."<sup>8</sup> PG&E and SCE argue that SB 1368 "resolves" this dispute by allowing categorical exemption for the "sequestered" CO2 portion of any such project and by allowing a case-by-case review.

DRA agrees that the approach identified by NRDC et al. would be easier to administer and would be more likely to promote the goals of the EPS than the approaches identified by other parties in their comments. NRDC et al. oppose any R&D exemption for electricity generation facilities whose pollution exceeds EPS standards.<sup>9</sup> This would hold all electricity producing facilities to a single standard. Coal facilities with carbon sequestration technologies that meet the emissions performance standard

---

<sup>7</sup> Sept. 8, 2006 NRDC, TURN, UCS and WRA Comments on Draft Workshop Report (NRDC Comments), pp. 16-17.

<sup>8</sup> September 8, 2006, DRA Comments on Draft Workshop Report, p. 5.

<sup>9</sup> NRDC Comments, pp. 14-15.

can compete with any other compliant facility in the California marketplace for electricity generation. Furthermore, DRA also agrees with NRDC et al. that the emissions of coal facilities that depend on carbon capture technology to meet EPS standards should be periodically inspected for compliance with EPS.

### **III. CONCLUSION**

For the foregoing reasons, DRA respectfully requests that the Commission adopt its recommendations.

Respectfully submitted,

/s/ DIANA L. LEE

---

Diana L. Lee  
Staff Counsel

Attorney for the Division of Ratepayer  
Advocates

California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
dil@cpuc.ca.gov  
Phone: (415) 703-4342  
Fax: (415) 703-4432

September 15, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE WORKSHOP REPORT OF DIVISION OF STRATEGIC PLANNING, PHASE I ISSUES**” in **R.06-04-009** by using the following service:

[ X ] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on September 15, 2006 at San Francisco, California.

/s/      NANCY SALYER

\_\_\_\_\_  
Nancy Salyer

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

●      \* \* \* \* \*

## SERVICE LIST R.06-04-009

keith.mccrea@sablaw.com  
klatt@energyattorney.com  
douglass@energyattorney.com  
Annette.Gilliam@sce.com  
troberts@sempra.com  
dil@cpuc.ca.gov  
ek@a-klaw.com  
mpa@a-klaw.com  
cjw5@pge.com  
lars@resource-solutions.org  
aweller@sel.com  
jchamberlin@sel.com  
kowalewskia@calpine.com  
bill.chen@constellation.com  
hoerner@redefiningprogress.org  
janill.richards@doj.ca.gov  
bmcc@mccarthylaw.com  
mary.lynch@constellation.com  
abb@eslawfirm.com  
glw@eslawfirm.com  
carter@ieta.org  
cajollyco@verizon.net  
bjones@mjbradley.com  
rapcowart@aol.com  
adrian.pye@na.centrica.com  
rick\_noger@praxair.com  
burtraw@rff.org  
cswollums@midamerican.com  
jimross@r-c-s-inc.com  
kevin.boudreaux@calpine.com  
ej\_wright@oxy.com  
pseby@mckennalong.com  
todil@mckennalong.com  
eguidry@westernresources.org  
kjsimonsen@ems-ca.com  
don.stoneberger@apses.com  
kelly.potter@apses.com  
bmcquown@reliant.com  
ckmitchell1@sbcglobal.net  
dsoyars@sppc.com  
fluchetti@ndep.nv.gov  
rprince@semprautilities.com  
curtis.kebler@gs.com  
gregory.koiser@constellation.com  
mmazur@3phases.com  
harveyederpspc.org@hotmail.com  
roger.pelote@williams.com  
pssed@adelphia.net

case.admin@sce.com  
bjl@bry.com  
amsmith@sempra.com  
lwrazen@sempraglobal.com  
svongdeuane@semprasolutions.com  
liddell@energyattorney.com  
ygross@sempraglobal.com  
jlaun@apogee.net  
hharris@coral-energy.com  
tdarton@pilotpowergroup.com  
jleslie@luce.com  
llund@commerceenergy.com  
george.hanson@ci.corona.ca.us  
norman.furuta@navy.mil  
pepper@cleanpowermarkets.com  
gsmith@adamsbroadwell.com  
mdjoseph@adamsbroadwell.com  
cpi@cpuc.ca.gov  
diane\_fellman@fpl.com  
hayley@turn.org  
marcel@turn.org  
freedman@turn.org  
mflorio@turn.org  
nsuetake@turn.org  
achang@nrdc.org  
Dan.adler@calcef.org  
dwang@nrdc.org  
deb@a-klaw.com  
filings@a-klaw.com  
obystrom@cera.com  
sls@a-klaw.com  
scarter@nrdc.org  
S1L7@pge.com  
epoole@adplaw.com  
agrimaldi@mckennalong.com  
bcragg@gmssr.com  
jsqueri@gmssr.com  
jscancarelli@flk.com  
jeffgray@dwt.com  
jwiedman@gmssr.com  
chris@newsdata.com  
jen@cnt.org  
lisa\_weinzimer@platts.com  
steven@moss.net  
ssmyers@att.net  
ell5@pge.com  
gxl2@pge.com  
jxa2@pge.com  
JDF1@PGE.COM  
sscb@pge.com



svs6@pge.com  
bkc7@pge.com  
vjw3@pge.com  
greg.blue@sbcglobal.net  
andy.vanhorn@vhcenergy.com  
sschleimer@calpine.com  
mrw@mrwassoc.com  
rschmidt@bartlewells.com  
cchen@ucsusa.org  
gmorris@emf.net  
jgalloway@ucsusa.org  
clyde.murley@comcast.net  
elvine@lbl.gov  
rhwiser@lbl.gov  
arno@arnoharris.com  
philm@scdenergy.com  
cpechman@powereconomics.com  
kswain@powereconomics.com  
emahlon@ecoact.org  
sberlin@mccarthyllaw.com  
richards@mid.org  
chrism@mid.org  
joyw@mid.org  
clark.bernier@rlw.com  
rmccann@umich.edu  
cmkehrein@ems-ca.com  
e-recipient@caiso.com  
groesenblum@caiso.com  
david@branchcomb.com  
scott.tomashefsky@ncpa.com  
ewolfe@resero.com  
ahartmann@lspower.com  
mclaughlin@braunlegal.com  
curt.barry@iwpnews.com  
steven@iepa.com  
etiedemann@kmtg.com  
bpurewal@water.ca.gov  
kmills@cbbf.com  
karen@klindh.com  
Denise\_Hill@transalta.com  
sas@a-klaw.com  
alan.comnes@nrgenergy.com  
mtrexler@climateservices.com  
kyle.l.davis@pacificorp.com  
shayleah.labray@pacificorp  
samuel.r.sadler@state.or.us  
lisa.c.schwartz@state.or.us  
jesus.arredondo@nrgenergy.com  
tim.hemig@nrgenergy.com  
karen.mcdonald@powerex.com

loe@cpuc.ca.gov  
tam@cpuc.ca.gov  
dsh@cpuc.ca.gov  
jol@cpuc.ca.gov  
jci@cpuc.ca.gov  
jf2@cpuc.ca.gov  
lrm@cpuc.ca.gov  
mjd@cpuc.ca.gov  
meg@cpuc.ca.gov  
mts@cpuc.ca.gov  
ner@cpuc.ca.gov  
tcx@cpuc.ca.gov  
ken.alex@doj.ca.gov  
meg@cpuc.ca.gov  
dks@cpuc.ca.gov  
kgriffin@energy.state.ca.us  
ldecarlo@energy.state.ca.us  
pduvair@energy.state.ca.us